



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]

DECISION

FCP/170538

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**PRELIMINARY RECITALS**

Pursuant to a petition filed December 02, 2015, under Wis. Admin. Code § DHS 10.55, to review a decision by the Community Care Inc. in regard to the Family Care Program (FCP), a hearing was held on February 09, 2016, at Racine, Wisconsin.

The issue for determination is whether the evidence is sufficient to reverse a decision by the FCP to reduce Petitioner's supportive home care hours from 312 hours per month to 272 hours per month.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: [REDACTED] and [REDACTED] RN  
Community Care Inc.  
205 Bishops Way  
Brookfield, WI 53005

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County.
2. Petitioner has been a recipient of Family Care supportive home care services in the amount of 312 hours per month (72.5 hour per week). He was notified that those benefits were to be reduced to 272 hours per month or (63 hours per week).
3. Petitioner lives in the community with his parents. They are his paid caregivers through [REDACTED]. He is 42 years of age. He is diagnosed with intractable epilepsy, profound mental retardation, schizophrenia and diabetes. He is dependent on his caregivers for

assistance with bathing, grooming, dressing, eating, toileting, meal prep, medication administration, money management, laundry and household chores, transportation to medical appointments and overnight cares.

4. Petitioner's case was subject to a review in September 2015. This included an in home assessment of Petitioner's needs. The result was the determination that 272 hours of supportive cares per month would meet Petitioner's needs.

### **DISCUSSION**

The Family Care Program, which is supervised by the Department of Health and Family Services, is designed to provide appropriate long-term care services for elderly or disabled adults. *Medicaid Eligibility Handbook (MEH)*, §29.1. It is authorized under Wisconsin Statutes, §46.286, and is described comprehensively in the *Wisconsin Administrative Code at Chapter DHS 10*. The program is operated and administered in each county by a Care Management Organization (CMO), which in this case is Community Care, Inc. Though Family Care enrollees are full partners in the assessment of needs and strengths and in the development of care plans those plans are subject to the general requirements and limitations outlined for the program, including the requirement that a service be cost-effective compared to alternative services or supports that could meet the same needs and achieve similar outcomes. *Wis. Admin. Code*, §§ DHS 10.44(2)(e) & (f). Medical assistance and its subprograms are meant to provide only basic and necessary health care.

In the Family Care Program (FCP), a case management organization (CMO) must develop an Individual Service Plan (ISP) in partnership with the client. *Wis. Admin. Code*, §DHS 10.44(2)(f). The ISP must reasonably and effectively address all of the client's long-term needs and outcomes to assist the client to be as self-reliant and autonomous as possible, but nevertheless must be cost effective. While the client has input, the CMO does not have to provide all services the client desires if there are less expensive alternatives to achieve the same results. *Wis. Admin. Code*, §DHS 10.44(2)(f); *DHS booklet, Being a Full Partner in Family Care*, page 9. Supportive home care and personal care services are included as covered services for family care. *Wis. Admin. Code* §DHS 10.41(2) and *Standard Contract at Addendum XII*; <http://www.dhs.wisconsin.gov/mltc/2013/2013Contract.htm>.

I will note at the outset here that the agency has not provided a 'before and after' list of services so that it can be precisely determined where there are reductions in certain cares. Petitioner's family argues that nothing has changed in Petitioner's condition and that he continued to need the 312 hours at a minimum. In fact, they would like more hours.

The total reduction here is 81 minutes per day. It appears that this is primarily in overnight care. It was 3.9 hours per night (234 minutes) and it was changed to 2 hours per night (120 minutes) based on interviews with the family. Time was reduced for nail care (24 minutes per month) as reviewers were told that Petitioner goes to a podiatrist. Shaving time was reduced from 10 minutes per day to 10 minutes per week as reviewers were told that Petitioner is shaved once per week because of skin issues. Additional time as allowed for suppositories (from - to times not specific), applying an analgesic cream at night for muscle spasms - now totaling 4 times per day instead of 2 at 8 minutes each and meal prep from 2 times per day to 3 times per day at 20 minutes each.

Petitioner's family noted at the hearing that Petitioner is shaved daily and that he does not see a podiatrist. Nonetheless, this is not what they told reviewers. Physician letters submitted on behalf of Petitioner simply state that 24 hour supervision and assistance with all cares and activities of daily living but do not offer detail as to caregiving time allocations.

I am not reversing the 272 hour month supportive home care determination made by the Family Care Program. While the Petitioner's family wants more time, they have not provided detail as to how the allocated time is insufficient beyond the argument that nothing has changed and the time allocated is not

enough. In the end there is simply not sufficient, quantitative evidence to disturb the agency allocations of time allowed here for Petitioner's cares.

### **CONCLUSIONS OF LAW**

That the evidence is not sufficient to demonstrate that the reduction in supportive care for Petitioner from 312 hours per month to 272 hours per month is incorrect.

**THEREFORE, it is**

### **ORDERED**

That this appeal is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 25th day of March, 2016

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\sDavid D. Fleming  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on March 25, 2016.

Community Care Inc.  
Office of Family Care Expansion  
Health Care Access and Accountability